

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS
Anchorage, Alaska
September 9, 2021
10:03 a.m.

MEMBERS PRESENT

Representative Ivy Spohnholz, Chair
Representative Andy Josephson
Representative Calvin Schrage
Representative Andi Story
Representative Mike Prax
Representative David Eastman

MEMBERS ABSENT

Representative Adam Wool

OTHER LEGISLATORS PRESENT

Representative George Rauscher

COMMITTEE CALENDAR

HOUSE BILL NO. 3007

"An Act relating to nonrefundable tax credits against the oil and gas production tax; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 3008

"An Act relating to use of income of the Alaska permanent fund; relating to the amount of the permanent fund dividend; relating to the duties of the commissioner of revenue; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 3007

SHORT TITLE: OIL & GAS PER BARREL TAX CREDIT

SPONSOR(S): WAYS & MEANS

08/30/21 (H) READ THE FIRST TIME - REFERRALS
08/30/21 (H) W&M, RES, FIN

09/07/21 (H) W&M AT 11:00 AM DAVIS 106
09/07/21 (H) -- MEETING CANCELED --
09/09/21 (H) W&M AT 10:00 AM ANCH LIO SANFORD Rm

BILL: HB 3008

SHORT TITLE: PERMANENT FUND DIVIDEND; 25/75 POMV SPLIT
SPONSOR(S): WAYS & MEANS

08/30/21 (H) READ THE FIRST TIME - REFERRALS
08/30/21 (H) W&M, STA, FIN
09/07/21 (H) W&M AT 11:00 AM DAVIS 106
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WITNESS REGISTER

ROSE FOLEY, Staff
Representative Ivy Spohnholz
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented sectional analyses of HB 3008 and HB 3007 on behalf of Representative Spohnholz, prime sponsor.

REPRESENTATIVE GEORGE RAUSCHER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 3008 and HB 3007, provided comments.

ACTION NARRATIVE

[10:03:49 AM](#)

CHAIR IVY SPOHNHOLZ called the House Special Committee on Ways and Means meeting to order at 10:03 a.m. Representatives Eastman, Josephson, Schrage, Story (via teleconference), and Spohnholz were present at the call to order. Representatives Prax arrived as the meeting was in progress. Also present was Representative Rauscher.

HB 3007-OIL & GAS PER BARREL TAX CREDIT
HB 3008-PERMANENT FUND DIVIDEND; 25/75 POMV SPLIT

[10:04:48 AM](#)

CHAIR SPOHNHOLZ announced that the first order of business would be HOUSE BILL NO. 3007, "An Act relating to nonrefundable tax

credits against the oil and gas production tax; and providing for an effective date." and HOUSE BILL NO. 3008, "An Act relating to use of income of the Alaska permanent fund; relating to the amount of the permanent fund dividend; relating to the duties of the commissioner of revenue; and providing for an effective date."

CHAIR SPOHNHOLZ provided introductory remarks concerning the fiscal instability in Alaska and the different proposed legislation currently before the legislature.

[10:09:50 AM](#)

CHAIR SPOHNHOLZ, as prime sponsor, presented HB 3007 and HB 3008 by means of a PowerPoint presentation. She began with HB 3008, which proposes an updated permanent fund percent of market value (POMV) split of 25/75 percent. She directed attention to slide 3, which shows updated information on the projected deficits of various split formulas that had been presented to the House Special Committee on Ways & Means by the Division of Legislative Finance on 9/1/21. [The chart on slide 3 shows the surplus/deficit for various formulas for fiscal year 2022 (FY 22) through FY 30.] A category for "before" the permanent fund dividend (PFD) shows numbers in the black; however, Chair Spohnholz said she does not think anyone wants to do away with the PFD completely. She said the 50/50 POMV split proposed by the governor would widen the fiscal gap. She advised that a 33 percent POMV to [67 percent] PFD plan would produce a fiscal gap in FY 22-FY 26, but various revenue measures could solve that, including a 1 percent income tax.

CHAIR SPOHNHOLZ said the option for a 25/75 percent split proposed under HB 3008, would result in [diminishing] deficits in FY 22-24 and then a surplus starting FY 25. As shown on slide 4, she specified that HB 3008 would rewrite the dividend formula such that the 5 percent POMV will be split as follows: 25 percent to dividends and 75 percent to "all else." She then highlighted information shown on slide 5, which indicates that under HB 3008, the amount of the PFD for a recipient would be \$1,248 in FY 23 and increasing incrementally to \$1,575 in FY 28. She introduced her staff to present the sectional analysis.

[10:13:17 AM](#)

ROSE FOLEY, Staff, Representative Ivy Spohnholz, Alaska State Legislature, presented a sectional analysis of HB 3008 on behalf

of Representative Spohnholz, prime sponsor. She said Section 1 amends AS 37.13.140, and she clarified that the amount available for appropriation may not exceed the balance of the earnings reserve account (ERA). She said this language existed previously in statute, and there is "a repealer" in Section 8 relocating this language. She said Section 2 amends AS 37.13.145(b) to allow appropriation from the ERA in accordance with the POMV statute, AS 37.13.140(b), as follows: 25 percent to the PFD and 75 percent to the state's general fund (GF). She said Section 3 amends AS 37.13.145(c) to clarify that an appropriation is required to move funds from the ERA to the principle of the Alaska permanent fund for the purpose of inflation-proofing. She explained that currently the statutory language refers to a transfer, and Wielechowski v. State of Alaska identifies that an appropriation is required.

MS. FOLEY said Section 4 amends AS 37.13.145(d) to stipulate that the funds associated with "the Amerada Hess settlement" are not included in the calculation of the POMV. Section 5 amends AS 37.13.300(c) to specify that income from the Alaska Mental Health Trust Fund is not included in the calculation of the POMV. She related that Section 6 amends AS 37.14.031(c) to require the Alaska Permanent Fund Corporation to calculate the net income of the Alaska Mental Health Trust Fund annually on the last day of the fiscal year, "excluding any unrealized gains or losses." She said Section 7 amends AS 43.23.025(a) to clarify that funds must be appropriated to the dividend fund rather than transferred, as she had previously noted. She stated that Section 8 repeals AS 37.13.145(e) and (f); these sections restricted appropriations from the ERA to the GF to "not more than is available for appropriation." She noted that similar language is now found in Section 1 of the bill.

[10:16:10 AM](#)

REPRESENTATIVE JOSEPHSON asked whether the bill includes a repeal of the 1982 dividend formula.

MS. FOLEY answered that it dedicates 25 percent of the POMV to be paid to dividends; "it does not repeal the underlying statute."

[10:17:00 AM](#)

REPRESENTATIVE PRAX noted that because of the Wielechowski v. State of Alaska decision, statutes require appropriation "and the legislature doesn't have to follow them." He recommended

repealing the preexisting dividend formula to clarify that "it's an annual fight and not any sort of a predictable formula."

CHAIR SPOHNHOLZ conveyed her intent was to propose a new dividend formula law for adoption, one that would reduce the fiscal gap, allow for transparency, and offer certainty for the people of Alaska. She opined that HB 3008 could "go in tandem with" HJR 1, to which she shared she had supported an amendment that would have included a dividend that is provided by law, thus creating an obligation to follow the law.

[10:20:13 AM](#)

REPRESENTATIVE PRAX said he appreciated the intent [of HB 3008]; however, he opined that the unfortunate reality was that the political pressure would continue, and the legislature would run out of money to spend, putting it back where it was in 2016.

CHAIR SPOHNHOLZ pointed to previously shown slide 3, to the information from the Division of Legislative Finance that a 25/75 split would create a surplus by FY 25. Based on that, she countered that this plan would create fiscal certainty for the state and reduce the likelihood of revisiting this decision in the future.

[10:22:03 AM](#)

REPRESENTATIVE SCHRAGE said he thinks the legislature has been following the law technically, but proffered that from the public's perception it is an issue when "you have two statues in conflict, and you choose to ignore one." He said he thinks there is a strong desire to change the formula, but disagreement on how to do so. He indicated that the 25/75 split is a law that could be followed, but there would still be a conflict with the prior statute; therefore, he suggested repealing the statute and letting "this be the new dividend statute."

CHAIR SPOHNHOLZ said she agrees and thinks HB 3008 would need to be amended such that the 1982 statute is repealed.

[10:23:44 AM](#)

REPRESENTATIVE JOSEPHSON asked Representative Prax whether he would support the governor's 50/50 constitutional amendment and, if so, why he would not support [HB 3008].

CHAIR SPOHNHOLZ clarified that HB 3008 was not proposing a constitutional amendment; it is a statutory formula.

REPRESENTATIVE JOSEPHSON then asked if there was any reason why this statute couldn't be constitutionalized; he posited that the math involved would not change.

CHAIR SPOHNHOLZ expressed her concern about constitutionalizing the dividend formula because it would create "an equal playing field for the payment of a dividend with our obligation to provide for the health, education, and safety of Alaskans." She stated her belief in following the law but that the law should be statutory. She reiterated her desire for more flexibility to meet the state's fiscal responsibility, as well as meet the needs of Alaskans, and she said a statute rather than a constitutional amendment offers that flexibility.

[10:27:25 AM](#)

REPRESENTATIVE JOSEPHSON discussed finding a "sweet spot" upon which 60 legislators can agree. He said he would entertain "constitutionalizing this sort of thing," especially "in combination of new revenue." He questioned the idea of a 50/50 split.

[10:28:52 AM](#)

REPRESENTATIVE SCHRAGE expressed his appreciation for the desire to constitutionalize the formula so that it would be followed, and he believed ad hoc draws were made because the formula wasn't compatible with the state's fiscal reality; however, the legislature would not have the same need to disregard the statute if it were updated, and that would give the legislature more incentive to follow the law, which would provide more public trust. He expressed hesitancy in constitutionalizing a formula because he doesn't know what the state's [fiscal situation] will look like in 100 years.

[10:30:53 AM](#)

REPRESENTATIVE STORY opined that a 25/75 split would still produce a healthy dividend and echoed the ideas expressed about public trust. She said she hoped there would be "more discussion about this going forward with more legislators."

[10:32:25 AM](#)

REPRESENTATIVE EASTMAN sought to confirm that the certainty, confidence, and consistency previously mentioned is resting on the ability to garner a three-quarters vote in the legislature.

CHAIR SPOHNHOLZ clarified that HB 3008 proposes a statutory change, which would require a majority vote rather than a three-quarters vote. In further response to Representative Eastman, she explained that her intention was to introduce a sustainable formula that the state could afford to pay on a regular basis to make it easy to follow the law. She said the problem has been that the state has had structural fiscal gaps for the last seven or eight years and has been unable to balance the budget without "spending down" the capital budget reserve (CBR). She said HB 3008 would still provide a robust dividend, as well as get the state back on track to fund a backlog of needed services.

[10:35:32 AM](#)

REPRESENTATIVE GEORGE RAUSCHER, Alaska State Legislature, stated that he has spent more time arguing about the size of the PFD than arguing about health care, education, or the budget. He emphasized that he is neither for nor against the proposed legislation but believes "something in the past" needs to be fixed and the legislature needs to "come up with something moving forward."

[10:38:20 AM](#)

REPRESENTATIVE JOSEPHSON said he partially agrees with Representative Rauscher; however, he characterized the debate this year as "out of control." He said he believed that Representative Prax' position [regarding the legislature finding itself back where it was in 2016] was reasonable; however, he opined that the governor's plan will create a massive deficit and relies on hope. He mentioned the governor's borders and said he, too, has a border. He said serious vetting is necessary beyond FY 30.

[10:41:09 AM](#)

CHAIR SPOHNHOLZ said her priorities are for a balanced plan; she said she could support a 50/50 split if there was enough revenue to fill the gap, which is a massive amount. She said it would essentially increase taxes on Alaskans by refusing to introduce a fiscal plan now. She offered her understanding that committee members' positions have evolved through discussions, which she appreciates.

REPRESENTATIVE JOSEPHSON recollected that a spreadsheet he had seen from the governor's plan did not show a deficit in FY 29 and 30.

CHAIR SPOHNHOLZ explained that the governor's 10-year fiscal plan includes "unspecified revenue in the future and unspecified cuts." Conversely, the analysis from the Division of Legislative Finance "does ... not do that," and the projections shown on the presentation are from assumptions derived by the Fiscal Policy Working Group. She observed that no revenue measures have been proposed by the governor, and it is week three of the Third Special Session.

REPRESENTATIVE JOSEPHSON underlined that legislators were called to the Third Special Session by the governor.

[10:45:04 AM](#)

CHAIR SPOHNHOLZ resumed the presentation at slide 6 to speak about HB 3007, which is the second part of the proposed fiscal plan to balance the state's budget and would reduce the per barrel oil tax credit. She highlighted a sampling of the numbers on the chart on slide 7 that [shows current oil values and tax credits compared to oil values and tax credits proposed under HB 3007], a bill that proposes a reduction of the per barrel oil tax credit. She explained that the current oil values and tax credits range from an \$8 tax credit for oil valued at less than \$80 to a \$1 credit for oil valued at [\$140 or less than \$150]. The proposed legislation would remove tax credits for oil valued at \$110 or higher and give a smaller scale of credits for oil valued under \$110. She discussed slide 8, which provides a chart showing a comparison of proposed fiscal plan elements. The numbers forecasted under HB 3007 are \$174 million in FY 23, [\$297.7 million] in FY 24, a peak of [\$460.6 million] in FY 25, and [\$386.7 million] in FY 26 and 27. She said HB 3007 proposes a modest change to the oil tax structure that would allow for a higher PFD while balancing the state's budget. She noted that slide 8 shows the cumulative effect of adopting four bills: HB 3007; HB 3008; HB 189, employment tax for education; and HB 104, motor fuel tax and vehicle registration fees. The amounts would be a deficit of approximately \$70 million in FY 23, and changing to \$322.8 million in the black by FY 24, [with modest increases showing in FY 25, 26, and 27]. She asked Ms. Foley to present the sectional analysis for HB [3007].

[10:48:21 AM](#)

MS. FOLEY explained that Section 1 of HB 3007 is illustrated in the aforementioned chart on slide 7. Section 2, she said, is the effective date [of 1/1/22].

[10:49:17 AM](#)

REPRESENTATIVE JOSEPHSON said he thinks the industry will question the policy call and compare the proposed legislation to Senate Bill 21 [passed during the Twenty-Eighth Alaska State Legislature]. He opined that the authors of Senate Bill 21 made the mistake of using the term "per barrel credit," because the phrase suggests that the state is incentivizing production, which he said was not the intent. Much of oil and gas production is "legacy" production, and he questioned why the state would incentivize legacy production, because "it's going to happen." He said that in that respect, the reform under this proposal makes sense; however, he predicted that the industry would see this as random.

[10:51:46 AM](#)

REPRESENTATIVE EASTMAN asked for confirmation of whether his understanding is correct that the sale of oil and gas should coincide with a high market; therefore, it doesn't matter whether it is a legacy field.

CHAIR SPOHNHOLZ explained that the major capital investments have already been expended and recouped in the legacy fields which she described as being in "harvest mode." Whereas, in newer fields, there is still the need to pay back the massive investment that has been made to produce the oil. She said HB 3007 does not propose a total restructure of the oil tax structure; other bills are being introduced for that purpose. She said the existing tax credit structure was added in at the last minute to Senate Bill 21, and the state can no longer afford that level of subsidy, especially for fields that are in harvest mode. In response to a follow-up question from Representative Eastman, she said in harvest mode, the North Slope field produces a profit after \$40 per barrel; therefore, continuing to provide a per barrel tax credit at the [lower] oil prices rather than the [higher] ones makes more sense. She added that when Senate Bill 21 was passed, the price of oil was high; now the spring forecast is \$71 per barrel, and HB 3007 would result in a \$4 per barrel tax credit under this scenario.

[10:56:32 AM](#)

REPRESENTATIVE PRAX remarked that HB 3007 is a simple bill with a complex and unpredictable impact. He mentioned a seminar on government tax policy and his experience in investing in oil production, as well as working in the oil industry. He advised speaking with those in the industry. He clarified that the companies must keep reinvesting in wells in legacy fields to produce as much as they can, and that that investment decision is made based on projected return; increasing the tax would affect their decision whether to invest in more development wells in the legacy fields. He indicated that [HB 3007] would reduce the initial returns of those companies, and he offered his understanding that the primary concern of oil companies is in recovering their initial investments as quickly as possible. He stated that HB 3007 will affect the decision to spend. He said with Alaska's Clear and Equitable Share (ACES), the State of Alaska received a windfall from the wells that were already drilled, but it "killed investment in new wells"; subsequently there was "a precipitous drop in revenue because production was declining even though prices were high." He expressed concern that the same thing is likely to happen and that in five years the state would lose more money in royalties and production taxes than it will gain "in the short run by increasing the tax on the industry." He warned that HB 3007 would result in a loss of money for the state and reiterated his advice to speak with members of the industry.

[11:02:22 AM](#)

CHAIR SPOHNHOLZ emphasized that HB 3007 was not proposing "a massive increase in oil taxes." She noted that the oil industry has expressed a desire for fiscal certainty, and she opined that resolving the state's fiscal situation is critical in creating that certainty, not only for the oil companies but for all Alaskans. She said the plan outlined in HB 3007 should not come as a surprise to oil companies, because there have been "behind-the-scenes" conversations about this model, including her own discussions with members of the Alaska Oil and Gas Association (AOGA). She emphasized that the oil in the North Slope belongs to Alaska, and under Article 6 of the Constitution of the State of Alaska, the state is obligated to seek the best value from all its natural resources for the maximum benefit of the people of Alaska.

[11:04:53 AM](#)

REPRESENTATIVE JOSEPHSON pointed out that there was evidence against the suggestion that ACES caused a slowdown in interest in exploration and development. He offered his understanding that prior to the state's fiscal crisis, it had paid over \$1 billion in tax credits, and that started prior to ACES. He stated, "If it were true that this reform would slow growth, it would suggest that we should ... increase the per barrel credit, because that should increase growth and expansion." He reiterated his point that [the legislature] is looking for "a reasonable sweet spot."

[11:06:43 AM](#)

REPRESENTATIVE PRAX responded that he doesn't disagree with that theory and stated that he would not be surprised if "they're willing to trade some money for stability." He indicated that [the committee] was "arguing in a vacuum," and he reemphasized the importance of having a conversation with the industry.

CHAIR SPOHNHOLZ noted that this was the initial hearing on both bills and there would be opportunities for public testimony moving forward.

[11:08:13 AM](#)

REPRESENTATIVE JOSEPHSON expressed appreciation for the creation of the House Special Committee on Ways and Means and for the work the committee has done. He opined that the 50/50 proposal [of the governor] is unrealistic and would require a large income and sales tax to pay for it. He speculated there is probably a way to constitutionalize a dividend and give people a guarantee, and he said, "I'm starting to see that it's possible."

CHAIR SPOHNHOLZ expressed appreciation for the comment and for the involvement of other committee members in the process. She said there could be other elements of a fiscal plan that could be considered. She remarked that after hearing Mr. Painter's presentation on 9/1/21, she thinks there is "a pretty clear path forward" in creating fiscal stability. She said she could support a larger PFD formula if there is revenue to support it, but at this time, "this particular plan provides some certainty moving forward for the State of Alaska" to support businesses, local jurisdictions, and the state constitution. She spoke of the hardship on Alaskans due to fiscal uncertainty and that uncertainty being the cause of outward migration from the state and business instability within the state.

[11:12:56 AM](#)

REPRESENTATIVE EASTMAN thanked Representative Prax for his work on the Fiscal Policy Working Group.

CHAIR SPOHNHOLZ echoed that appreciation.

[11:13:49 AM](#)

REPRESENTATIVE STORY said she thinks HB 3007 would bring revenue to the state with a modest change that she said she thinks will be affordable for oil companies.

[HB 3008 and HB 3007 were held over.]

[11:15:44 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Ways and Means meeting was adjourned at [11:16] a.m.